



# Pennsylvania State Historic Preservation Office

PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

June 8, 2017

Mr. Ajit Pai, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

RE: WT Docket No. 17-79, In the Matter Of: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Notice of Proposed Rulemaking and Notice of Inquiry

Dear Chairman Pai,

The Pennsylvania State Historic Preservation Office (PASHPO) has reviewed the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking and Notice of Inquiry regarding WT Docket No. 17-79: *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment* (Notice). Section 106 of the National Historic Preservation Act of 1966, and its implementing regulations (36 CFR Part 800) of the Advisory Council on Historic Preservation, seeks to achieve a balance between historic preservation concerns and the needs of the federal agency. The PASHPO currently reviews FCC projects in accordance with the two Nationwide Programmatic Agreements (NPA) for new tower construction and the collocation of communications equipment on existing structures, as amended. While reducing the duration of and ultimately streamlining regulatory review of wireless infrastructure is an important pursuit, it should not be carried out at the sacrifice of historic properties.

We offer the following comments on the Notice:

*Paragraph 11: "The Commission asks commenters to discuss whether the Commission should consider adopting different time frames for review of facility deployments not covered by the Spectrum Act."*

- The PASHPO review time for FCC projects averaged 14.5 days (710 total projects) in 2015 and 19.27 days (639 total projects) in 2016. From this, our office is already reviewing projects well within the 30-day review period outlined under the implementing regulations for Section 106. In addition, we have agreed to utilize the FCC E-106 system, which helps to facilitate review times. In our opinion, imposing different time limits on different categories of construction would cause confusion in the process on not only the SHPO level but potentially on the applicant's level as well.

*Paragraph 19: "Some wireless providers contend that the SHPO review process also results in significant delays in deployment."*

- Based on our review records and in listening to the other SHPOs that participated in the May 22, 2017 conference call for the Notice, it is our opinion that the "regulatory impediments" with regards to Section 106 are generally misplaced on the SHPOs. We can only review and comment on the information that we receive from the applicants and their consultants, which is often inadequate. Consultants often provide extraneous information outside of the NPA requirements and/or provide attachments that are poorly labeled, thereby requiring extensive effort on the part of SHPO staff to review the information provided. In many cases, mapping, historic property identification, and assessment of effects is either done incorrectly or missing entirely. For example, for collocations within historic districts, consideration of alternatives to avoid or minimize



effects, as required by the implementing regulations, is often missing, resulting in SHPO requests for additional information or concurrence with conditions. In addition, information as simple as the correct project location (township, city, etc.) is missing, again putting more onus on SHPO staff to cross-reference and discern for ourselves. In fiscal years 2015 and 2016, approximately ten percent of the 1,349 FCC projects reviewed in Pennsylvania required additional information. This number does not accurately reflect the levels of inadequate information received. Generally, in Pennsylvania, we opt to do the cross-referencing and deciphering ourselves, when we are able, versus “rejecting” (i.e. requesting more information) for a submittal, thereby actually saving the applicant/consultant considerable time. In summary, the preparation of complete documentation by qualified consultants would avoid delays in the SHPO review process.

*Paragraph 19: “Does the SHPO review process duplicate historic preservation review at the local level, particularly when local review is conducted by a Certified Local Government or a government authority that issues a Certificate of Appropriateness.”*

- CLGs or other local authorities are typically staffed by volunteer commission members who rarely meet the Secretary of the Interior’s Professional Qualification Standards. CLGs only have the authority to review locally designated properties, typically located within denser small towns or cities. In 2015 and 2016, approximately 10 FCC projects in Pennsylvania resulted in adverse effects to identified rural landscapes, rural historic districts, and/or agricultural properties wherein there would have been no CLG oversight. Furthermore, if this question is being asked with the idea that the CLGs would fulfill the SHPO’s responsibility under Section 106, then would the NPA be amended to allow this? Would FCC ensure that CLG staff meet the Secretary of Interior’s Professional Qualification Standards? This seems unlikely given that the applicants, as per the NPAs, are currently required to use “qualified professionals experienced with the NHPA and Section 106”, and instead often utilize engineers or environmental scientists who do not meet these qualifications. In addition, if this review was delegated to the CLGs and/or local government authority, it would preclude consulting party coordination with other individuals and/or organizations outside of the reviewing entity. A higher potential also exists for conflicts of interest through the exclusive use of review at the local level. Finally, CLGs typically do not consider impacts to archaeological resources or Native American sites as this type of data is only held by the SHPOs and the Tribes.

*Paragraph 19: “How often SHPO review results in changes to a construction project due a SHPO’s identification of potential harm to historic properties or confers other public benefits.”*

- Our office does not track these types of responses; however, based on the experience of staff, this happens dozens of a times throughout the year, typically for collocations. In cases where minimization is requested, we will often call or email the applicant’s consultant directly requesting minimization options (painting, repositioning of antennas, etc.) before posting the request in FCC. Or we “Concur with Conditions” requesting specific measures so that the project may continue without the need for extensive additional consultation.

*Paragraph 21: “The Commission seeks comment on whether local permitting, NEPA review, and Section 106 review processes can feasibly be conducted simultaneously, and on whether there are barriers preventing simultaneous review to the extent it is feasible.”*

- In our opinion, these reviews could be done simultaneously as long as complete and adequate information is provided and the requirements of the different reviews are



effectively coordinated by the applicant. Perhaps the reviews could be coordinated through the use of a system similar to FCC E-106.

*Paragraph 39: Lack of Response. "As discussed above, while both State Historic Preservation Officers (SHPOs) and Tribal Nations/NHOs are expected ordinarily to respond to contacts within 30 days, the NPA and the Commission's practice establish different processes to be followed when responses are not timely."*

- Our office has no record of having recently received any notices of projects wherein we did not provide a response. As evidenced by earlier comments, our SHPO review (as well as the information reported by various other SHPOs to date) averages between 14 and 19 days, wherein it may take months to receive information **back** from the applicant, particularly in cases of adverse effect.

*Paragraphs 41 and 42: Batching.*

- Our office would prefer batched submissions of no more than ten (10) projects as this would reduce processing and logging time, provided that the batches are in the same county and along a related corridor or located within a defined geographical area. However, unlike the PTC submissions, we would request that batching be done only for those non-exempted projects. For PTC projects, we are still receiving submittals that include both exempt and non-exempt projects, which can lead to onerous reviews. The downside to batching from a project delivery standpoint would be that there is no way to separate the batching so if information is incomplete and/or there are issues with one of the 10 projects, it may hold up the process for the other projects within the batch.

*Paragraphs 45 - 54: NHPA Exclusions for Small Facilities*

- Pole Replacements: "Substantially larger" needs to be defined, from the perspective of the original pole. The gradual increase of pole height could end up resulting in an adverse effect through accretionary increases.
- Rights of Way: As noted in the Notice, it was not feasible to draft an exclusion in the NPA for transportation corridors that would "both significantly ease the burdens of Section 106 process and sufficiently protect historic properties." It is our opinion that while we recognize that transportation corridors are where the demand for wireless service is the highest, they also commonly run through historic districts, traverse rural historic landscapes, contain adjacent intact archaeological sites, and/or are historic properties by their own right. Cumulative effects within both the direct and visual APEs need to be considered. Substantial increase would need to be defined, again from the perspective of the original pole.
- Collocations: The NPA currently provides for the review of collocations if they are within 250 feet of historic districts. Due to the variety of equipment and installation methods, many could be visible within the 50-250 feet proposed area, particularly in less dense areas. In addition, cumulative effects should be considered. As to whether "the Commission can or should exclude from routine historic preservation review certain collocations that have received local approval" – our specific concerns are outlined above in our comments on Paragraph 19.

*Paragraph 55: "The Commission also invites comment on whether to revisit the Commission's determination that registration of antenna structures constitutes the Commission's Federal action and undertaking so as to require environmental and historic preservation review of the registered towers' construction."*

- In our opinion, if not for the FCC license, the antenna structure would not exist. The FCC license cannot exist without the antenna structure supporting the antenna. Therefore, the registration of an antenna structure constitutes an undertaking.

*Paragraph 56: "Does the requirement in the Collocation NPA to perform review for collocations on towers that did not themselves complete Section 106 review create problems in administration or market distortions where the owner of the underlying tower may not have been subject to the Commission's rules at the time of construction?"*

- The construction of the tower or collocation prior to initiating consultation precludes any meaningful comments with regards to the potential effects on historic properties; we would argue therefore that allowing licenses on towers wherein the tower was constructed prior to the issuance of a FCC license is a foreclosure due to anticipatory construction. We would argue that clearly the towers were constructed to allow for telecommunications equipment. Exempting this review would create a precedent of the FCC accepting foreclosures and disregarding the Section 106 process at the potential expense of historic properties.

*Paragraphs 57 – 61: Collocations on Twilight Towers and Paragraph 62: Collocations on other Non-Compliant Towers*

- The construction of a tower or collocation without review under Section 106 is a violation of the National Historic Preservation Act. It is not a twilight tower but essentially an illegal tower. The passage of time does not negate this fact or lessen its potential effects of its construction. The NPA for new towers addresses the responsibilities and procedures for such towers in Part X, "Construction Prior to Compliance with Section 106." Our office is still waiting on a list of these towers from the FCC, as indicated for the past several years during various conference calls regarding such towers. Does the FCC maintain a list of towers that have been reviewed? For towers constructed prior to the implementation of the E-106 system, our office routinely handles inquiries from applicants seeking to know if a tower has gone through previous reviews. Our office would welcome discussions with the FCC and other SHPOs about the development of a program to make records and information available. Does the FCC have past records, prior to the implementation of E-106? Has FCC considered the use of GIS-based record keeping as well? If E-106 could be linked to GIS data and/or spatial mapping, this would certainly streamline reviews for not only our office but we suspect throughout the entire process. It would also ease the burden of having to open and cross-reference mapping attachments.

Again, we encourage the development of an exemption list to avoid unnecessary reviews; however, similar to the development of the NPAs, we encourage continued consultation regarding any amendment or program comment to ensure such is not done at the expense of the law. It is our opinion that this could be accomplished by amending the existing NPAs, to include the replacement of poles, right-of-ways, and collocations, while considering and addressing the comments and questions posed above. The critical need is for these exemptions to be reviewed and the NPAs implemented by qualified professional staff who meet the Secretary of Interior's Professional Qualification Standards and understand the respective SHPO requirements and guidelines. In addition, the use of GIS based layers and/or GIS-linked spatial mapping as part of

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the E-106 system would also expedite review considerably as well as reduce the margin of error for the applicant in providing adequate location information.

We appreciate the opportunity to comment on the concerns highlighted by FCC and look forward to further consultation with the agency.

Sincerely,

A handwritten signature in blue ink that reads "Andrea L. MacDonald". The signature is fluid and cursive, with the first name "Andrea" and last name "MacDonald" clearly legible.

Ms. Andrea L. MacDonald  
Director, Pennsylvania State Historic Preservation Office